

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

**In re ANGEL A., et al., Persons Coming
Under the Juvenile Court Law.**

**NAPA COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,**

Plaintiff and Respondent,

v.

AMBER A.,

Defendant and Appellant.

A125144

**(Napa County Super. Ct. Nos.
JV15623, JV15624, & JV15625)**

Amber A. (Mother) appeals from orders denying her petition under Welfare and Institutions Code section 388¹ to renew reunification services and terminating her parental rights as to her daughters, Carla and Mariah, and her son, Angel. We affirm, as we conclude the trial court reasonably found (1) that Mother had not shown changed circumstances justifying further reunification services, and (2) that the beneficial relationship exception to termination (§ 366.26, subd. (c)(1)(B)(i)) does not apply.

FACTUAL AND PROCEDURAL BACKGROUND

Mother met Miguel A. (Father) when she was 17 years old and started using drugs

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

with him. A few months into the relationship, she became pregnant with Carla, who was born in November 2001. Angel was born two years later, in December 2003. Mother and Father married in 2004, and Mariah was born in July 2006. Mother claims she did not use drugs while she was pregnant, but started using again in early 2008 so Father would stay with her.

On May 28, 2008, Mother called the Napa Police Department and reported that someone was looking in her window and taking pictures of her. Police officers determined that this was not possible, as her apartment was on the second floor and had no balcony or ledge. She exhibited signs of stimulant drug use, including nervousness, paranoia, and thick, rapid, rambling speech. She could not sit still. She admitted smoking methamphetamine with Father the day before and said she had been awake all night. The officers arrested her for being under the influence of a controlled substance.

Carla (age 6), Angel (age 4), and Mariah (age 22 months) were in the home at the time of Mother's arrest and believed her claim that someone was looking at them through the window. As Mother was unable to provide a working telephone number for her mother, police could not arrange care for the children and called Child Protective Services Napa County Department of Health and Human Services (the Department). Father could not be located, and the children were placed in protective custody. The social worker observed that Mariah was listless and tired and had a significant cough, a runny nose, and a fever. She was taken to a doctor later that day who "stated [Mariah] was suffering from an untreated ear infection, nose infection[,] and Strider." The doctor noted that Mariah would have required emergency room care if her condition had gone untreated.

Mother was released from jail the next day and appeared to be under the influence when she met with the social worker. She could not sit still, slurred her speech, and experienced mood swings ranging from hostility to hysterical crying. Father called the Department that day and said he was not in a position to care for the children.

On May 30, 2008, the Department petitioned to establish all three children as dependents of the juvenile court under section 300, subdivision (b). (See *id.* [substantial

risk of serious physical harm from parents' inability to provide regular care due to substance abuse[.]) The petitions for Carla and Angel alleged, in addition, that their sister had been neglected and there was a substantial risk they would be neglected as well. (See § 300, subd. (j).) On June 2, 2008, the juvenile court ordered that the children be detained and that reunification services, including supervised visitation, be provided to both parents.

The court set a jurisdictional hearing. The report for this hearing indicated that Mother had been "extremely cooperative." She was attending Narcotics Anonymous (NA) meetings, had enrolled in a drug and alcohol treatment program, and had been assigned a therapist. She had submitted to two random drug tests that were negative. She participated in supervised visitation with the children twice a week and was nurturing and appropriate during visits. The social worker observed that the children, who were clearly bonded with one another, "look forward to visits with the mother[,] and are talkative and playful with [her] during visits. The end of visits [is] particularly difficult for Carla (age 6) and Angel (age 4), who become tearful and sad." The report recommended that the court establish jurisdiction over the children, as Mother was in the early stages of recovery and would need a longer pattern of sobriety before the children could be returned.² On June 19, 2008, the juvenile court sustained the petitions and set the cases for a dispositional hearing.

The dispositional hearing was held two months later, on August 12, 2008. The report for this hearing commended Mother's efforts at reunification. She had taken 11 of 12 random drug tests, all of which were negative, entered a drug treatment program, and was seeing a therapist weekly. She was participating in supervised visitation twice a week and had missed only one visit due to illness. The social worker observed: "The minors' behavior during visitation with the mother is very consistent. Carla is quiet and plays or colors by herself. She will answer questions when asked, but rarely makes eye

² The report indicated that Father had not cooperated with the Department. He missed his scheduled appointment with the social worker, promised to call to reschedule but never did, and did not return telephone calls.

contact or participates in activities that the other children are doing. Angel shouts at the mother, requesting her attention with screams of ‘Mommy’ and hitting her legs or arms gently for her attention. Mariah becomes whiney and demands to be held by the mother. Often the mother does not make attempts to pick up Mariah or comfort her, which results in Mariah throwing a temper tantrum.” The report indicated that Mother was overwhelmed and struggled to deal with the children’s demands for attention. The Department arranged for a visit coach to help her learn more effective parenting techniques, and she responded well to coaching. Because the visits were so chaotic, the Department modified the weekly visitation schedule. Under the revised schedule, Mother had one weekly visit with the children together, another visit with Carla and Angel only, and a third visit with Mariah one-on-one.

The dispositional report indicated that Mother’s ongoing relationship with Father was a serious concern for a number of reasons. First, he had a history of domestic violence, including a 2003 conviction for infliction of corporal injury on a spouse. The children said they remembered when “ ‘Daddy broke the phone on [M]ommy’s lip.’ ” Additionally, he encouraged Mother’s drug use, and had an extensive criminal record that included a felony conviction for grand theft and 20 misdemeanor convictions for vandalism, possession of a controlled substance, and driving under the influence. Mother said that she and Father had separated in March 2008, and that she had filed for divorce in May 2008, after she was released from jail. The report indicated, however, that she had returned repeatedly to the relationship during the separation. This pattern suggested to the Department that she was unable to make decisions to keep herself safe and would put the children at risk. Indeed, Mother had called police less than two weeks earlier to report an incident of domestic violence. Father had come to her home asking for drugs and became hostile when she said she did not have any. He waited on her doorstep until she opened the door, then grabbed her in a “bear hug” and went through her pockets, taking \$10 and a pack of cigarettes. He was later arrested for robbery and domestic violence. After this incident, Mother obtained a temporary restraining order and said she planned to make it permanent.

The dispositional report also expressed concern that Mother's limited decision-making skills and "pattern of making poor choices" affected her ability to parent her children safely. The report noted that on July 17, 2008, she had been arrested for shoplifting clothes from a department store. She later told the social worker she stole the clothes for Father, another woman, and herself. The Department requested a psychological evaluation of Mother so it could provide appropriate services addressing this concern.

The report recommended a reunification plan for Mother but asked that the court terminate reunification services to Father.³

On August 12, 2008, the juvenile court declared all three children dependents and denied further reunification services to Father. The court delayed the proceeding while the dispositional report, including the recommended reunification plan, was read to Mother, who has severe dyslexia and is unable to read. The court adopted the recommended reunification plan, which required Mother to: comply with visitation, demonstrate knowledge of nonphysical age-appropriate discipline for the children, complete a parenting class, see a therapist, and attend at least two domestic violence counseling groups. Mother also was required to attend at least three NA meetings each week, complete a drug treatment program, submit to random drug testing, and participate in the court's Substance Abuse Recovery Management System (SARMS) for review of her participation and progress in recovery. The plan also required Mother to submit to a psychological evaluation and follow the evaluator's recommendations. The court advised her that if she did not comply with the reunification plan by the six-month review, the case could be referred for termination of her parental rights.

In October 2008, Dr. Kelly Horton conducted a psychological evaluation of Mother. Intelligence tests revealed that her overall cognitive ability was in the extremely

³ The report indicated that Father stopped visitation after showing up drunk to a visit, had not enrolled in drug treatment, continued to engage in criminal activity and domestic abuse, and had "done very little to show that he is able or willing to provide care, safety or nurturing for the minors."

low range. Dr. Horton observed that she tended to seek more information than she could integrate and, as a result, was hesitant in making decisions and uncertain about the decisions she made. The doctor also noted a possible “orientation toward gratifying needs as soon as they arise,” which raised particular concern about her drug use. Dr. Horton found that Mother had fewer resources than most people for coping with everyday living and was “more likely to make decisions on the basis of how she feels than by what she thinks.” The doctor further found that she lacked self-awareness and was at risk for adjustment difficulties involving “insufficient appreciation of the impact she has on other people, and a limited capacity to examine herself in a critical fashion and then modify her behavior accordingly.” Based on these findings, the Department “made efforts to regularly meet with [M]other to explain what she need[ed] to do to reunify with [her children].” Dr. Horton concluded: “[A]lthough [Mother] is willing, she lacks the appropriate skill and/or knowledge to appropriately meet the demands of parenting.” The doctor recommended ongoing parenting education, completion of a drug treatment program, random drug testing until Mother had been clean for one year, therapy focusing on her self-esteem, completion of her divorce, and one year of monitoring. The doctor believed treatment of Mother’s learning disability was particularly important, as her lack of education impacted her confidence in parenting her children. Dr. Horton believed she would be able to provide adequate care for her children if she followed these recommendations.

The December 2008 report for the six-month review indicated that Mother had participated only minimally and superficially in services. She missed six drug tests, refused one, and tested positive once for alcohol. She missed several days of her drug treatment program and stopped attending therapy at the end of August 2008. She went to NA meetings but had attended only one domestic violence group and had not completed a parenting class. Although the Department provided access to the services recommended by Dr. Horton, Mother did not follow through to engage in these services. The report expressed concern that if she could not “attend her own services, she [would] be unable

to meet her . . . children's needs and services[,] such as school, medical appointments[,] and therapy.”

Mother also failed to participate regularly in visitation. She was frequently late, left early, or missed visits entirely. She missed 7 of 31 scheduled visits and was late to, or left early from seven others. She left one visit 45 minutes early when Father picked her up in a limousine, for an alleged doctor's appointment. The report indicated that Carla was “particularly challenging and angry after [Mother] has missed a visit.”

Mother still had difficulty parenting the children during visits. In October 2008, the Department resumed the original visitation schedule to see if she had made progress in parenting all three children at the same time. She continued to struggle, and the visits remained disorganized and chaotic. The report indicated that Mariah “frequently screams and cries hysterically through visits,” often so loudly that people came out of their offices to check on her. Angel “speak[s] in a shouting voice all the time, as if he needs to shout in order for people to see or hear him.” Carla, on the other hand, often sat quietly by herself. “She does not seem to want to cause problems [for] her parents and prefers to isolate herself, especially when Mariah is crying or throwing a temper tantrum” The visit coach frequently had to intervene and act as a second parent. The report noted that Mother lacked basic parenting skills but had difficulty accepting advice. She could not practice new parenting skills during visits because she had not attended parenting classes.

Also of significant concern was Mother's continuing unwillingness or inability to sever ties with Father, her active participation in the cycle of domestic violence, and her inability to see her role in the relationship or its impact on the children. She had not obtained a permanent restraining order, as she said she would, and the Department lacked confidence that she could “break this pattern of re-engaging with [Father], despite [his] repeated interference in her reunification plan.”

The Department concluded that, after six months of services, Mother had not made substantial changes and would not be able to achieve the case plan goals if services were extended for another six months. Mother had not shown she was able to provide the structure, consistency, and supervision necessary to keep her children safe. Due to their

young age and immediate need for a permanent, stable home, the report recommended termination of reunification services.

At Mother's request, the court set a contested hearing. An addendum report for this hearing indicated that Mother had been faking her drug tests. On December 2, 2008, the Department received an anonymous tip that she had been asking friends for clean urine and a call from her drug counselor, who had heard from another client that she had been falsifying her results. At a random drug test later that day, Mother appeared to be under the influence, so both a urinalysis and an oral swab test were done. The urine test was negative, but the oral swabs were positive for methamphetamines. Two days later, a social worker observed Mother fidgeting between her legs while providing the sample, heard a "pop," and the sound of urine filling the cup. Accordingly, both tests were again performed and produced the same results. A week later, another social worker, who observed similar behavior while Mother was providing a urine specimen, also did an oral swab, with the same result. Mother refused a drug test on December 19. The report indicated that she had put more effort into hiding her drug use than participating in services, had made no progress in recovery, and did not grasp the need to provide her children a safe, stable life, free from her drug use.

At the contested hearing on January 26, 2009, the court heard testimony from Mother, her therapist, her drug counselor, a mental health counselor in her drug treatment program, and the social worker. Mother was five months pregnant with Father's child and had tested positive for methamphetamines during her pregnancy. Her drug counselor testified that she would need at least six months of sobriety before she could take care of her children. The juvenile court found that Mother had continued her drug use, had not been honest with the Department, and had failed to participate in services. The court found further that she was unable to be consistent or to control the children and that her inability to separate from Father was "fatal to the return of the children." The court did not find a substantial probability that she would reunify with the children if services were extended another six months. Noting the young age of the children, the court terminated reunification services and set a section 366.26 hearing. (See § 366.21, subd. (e), 3d par.)

Mother filed a notice of intent to file a writ petition seeking review of the court's order, but never filed such a petition.

In February 2009, the Department requested a psychological evaluation for Carla. The request was triggered by her recent behavioral problems, which included lying, sexualized behavior, episodes of encopresis, and enuresis, and incidents of physical aggression in which she hit, kicked, or choked the younger children. The court granted the petition, and Carla was evaluated by psychologist, Dr. Linda Bancke, in late March 2009. Dr. Bancke concluded that Carla suffered from chronic posttraumatic stress disorder (PTSD) due to extreme neglect resulting from her parents' severe addictions. Other traumatic events included her parents' fights, possible sexual abuse, abrupt separation from her parents, and multiple placements in foster care. Carla's emotional and behavioral reactions to these events also evidenced a chronic adjustment disorder. In addition, Dr. Bancke noted that Carla's strong attachment to her siblings had "become largely negative because Angel and Mariah [had] bonded to her as a parent surrogate as much or more than just as their older sister." Dr. Bancke recommended: "Carla's life and that of her siblings need to be stabilized as soon as possible by assuring the children that their placement is a permanent one."

On May 7, 2009, a week before the scheduled hearing on permanent placement, Mother filed a request to change court order seeking to modify the order terminating reunification services and vacate the section 366.26 hearing. She asserted as a "change in circumstance" her belated compliance with the reunification plan by completing drug treatment and a parenting class, attending NA/AA meetings, and consistently visiting the children. (See § 388.) The court set her petition for a contested hearing, to be trailed by the section 366.26 hearing. At the June 1, 2009 hearing on the petition, the court heard testimony from Mother, Father, the social worker, and Mother's drug counselor. The children's advocate concluded that additional services were not in their best interest because of their age, the time they had been in foster care, and their need for permanency. The court denied the petition, as it was unable to find a substantial or lasting change in circumstances. The court did not believe Mother would be able to stay away from

Father, given their history, and found her sobriety too brief to ensure the children would be raised in a drug-free home. The court stated further: “[Mother] has only the vaguest idea of how she will establish a stable living situation with her four children. Her plans are completely unsecured. They are simply ideas, not plans.” The court acknowledged that Carla wanted to live with Mother, but observed that Carla suffered from psychological issues caused by her destructive and chaotic upbringing.

After denying Mother’s petition, the juvenile court proceeded immediately to the section 366.26 hearing. The report for this hearing indicated that the children were vulnerable because they had experienced so much grief and loss due to their removal and multiple placements in foster care.⁴ The report strongly recommended termination of parental rights and a plan of adoption, as the children were in immediate need of a permanent, stable, safe, consistent, and nurturing home that neither parent could provide. The report indicated it was highly likely the children would be adopted. Both their maternal aunt and their current foster family had expressed interest in adopting them. The report recommended that the children remain together: “the need for a sibling bond definitely outweighs any potential benefit any of the children might experience through separate homes.”

Mother contended that her parental rights should not be terminated, relying on the beneficial relationship exception to termination set forth in section 366.26, subdivision (c)(1)(B)(i). She claimed that she had such a relationship with Carla and, although Angel and Mariah did not share Carla’s attachment, that the children needed to remain together. Mother requested a plan of guardianship for the children to provide stability and permanence while preserving her bond with Carla.

After hearing further testimony from Mother and the social worker, the court terminated the parental rights of Mother and Father and selected a permanent plan of adoption. The court found that Carla was bonded with Mother, but that this bond was not a beneficial one. Noting Carla’s psychological problems, the court observed: “Carla

⁴ The children’s foster home in June 2009 was the fourth placement for Angel and Mariah and the fifth for Carla.

attempted to bond with her mother [and] needs a bonding figure, but her mother was not able to provide that during the entire time that Carla was growing up”

Mother filed a timely appeal from the orders denying her section 388 petition and terminating her parental rights (June 2009 orders).⁵

DISCUSSION

I. Section 366.26, Subdivision (l) Does Not Bar Mother’s Appeal

As a preliminary matter, we reject the Department’s assertion that Mother’s appeal is barred by section 366.26, subdivision (l). The Department contends this provision precludes review of the June 2009 orders because Mother did not seek writ review of the court’s January 2009 order terminating services and setting a section 366.26 hearing. Section 366.26, subdivision (l) provides that an order setting a section 366.26 hearing (referral order) is not appealable unless a writ petition satisfying certain conditions was timely filed and summarily denied or not decided on the merits. (See § 366.26, subd. (l)(1).) Failure to comply with these conditions precludes review of “[a]n order by the court that a [section 366.26] hearing be held” and “any order, regardless of its nature, made at the hearing at which a setting order is entered.” (See § 366.26, subd. (l); *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1024.) Mother does not appeal from the January 2009 referral order or any contemporaneous order.

Contrary to the Department’s assertion, failure to seek writ review of the referral order does not preclude review of “the findings and orders made at a section 366.26 hearing.” Section 366.26, subdivision (l)(2) provides that failure to comply with the writ review conditions “shall preclude subsequent review by appeal of the findings and orders *made pursuant to this section.*” (Italics added.) This provision must be read, however, to foreclose review of the “findings subsumed within a referral order,” not the order made at the section 366.26 hearing. (*Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1507, fn. 3.)

⁵ As Father has not appealed from the court’s decision, we consider these orders only to the extent they determine Mother’s rights with regard to the children.

The Department also maintains that section 366.26, subdivision (l) precludes review of the section 388 order because reversal of this order would require vacation of the referral order as well. “[C]ontentions designed to overturn a referral order are not cognizable on appeal unless writ review was sought, even if the contention relates only to contemporaneous orders which would otherwise be appealable. [Citations.]” (*In re Rashad B.* (1999) 76 Cal.App.4th 442, 447-448.) The section 388 order was issued several months after the referral order and was not a contemporaneous order. Moreover, although Mother sought to modify the contemporaneous order terminating services and to vacate the section 366.26 hearing, she did so in the manner provided by statute based on changed circumstances. (See § 388; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526-535, 528 (*Kimberly F.*), citing *In re Marilyn H.* (1993) 5 Cal.4th 295, 309 [section 388 is a built-in “ ‘escape mechanism’ ” that satisfies the due process rights of parents who complete a reformation after services are terminated but before the termination of parental rights].) By its very nature, the issue of changed circumstances arose after the referral order and would not have been part of the review of that order on a writ petition. The authority on which the Department relies does not call for a different result, as the issues on which review was precluded in those cases arose at the time of the referral orders, or earlier. (See *In re Anthony B.*, *supra*, 72 Cal.App.4th at pp. 1021-1022; *In re Rashad B.*, *supra*, 76 Cal.App.4th at pp. 446-447; *In re Charmice G.* (1998) 66 Cal.App.4th 659, 662.)

Having concluded that the June 2009 orders are properly before us, we turn to the merits of Mother’s appeal from these orders, addressing each in turn.

II. Mother’s Petition for Renewed Reunification Services (§ 388)

Mother contends the juvenile court erred in denying her petition under section 388, in which she sought to modify the January 2009 order terminating reunification services. We review the court’s decision for an abuse of discretion. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

Once the court has terminated reunification services, “ ‘[t]he burden . . . is on the parent to prove changed circumstances pursuant to section 388 to revive the reunification

issue.’ ” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1196, quoting *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) Section 388 permits a parent to petition the court to change, modify, or set aside a previous order in the dependency based on a change in circumstance or new evidence. To prevail on such a motion, a parent must establish that new evidence or a change of circumstances makes the proposed modification in the child’s best interest. (*In re Jasmon O.*, *supra*, 8 Cal.4th at p. 416.)

We find no abuse of discretion here. Mother contends she made a “significant change” that “favored the provision of additional reunification services.” The evidence showed she had complied with a number of the requirements in her reunification plan, including completion of a drug treatment program and attendance at NA meetings, therapy parenting classes, and a domestic violence group. She testified that she was participating in aftercare and had a sponsor. Her drug counselor testified that her drug tests since December 2008, were negative, expressed confidence that the tests had not been falsified, and believed she had the appropriate support to stay clean.

A court could reasonably find, nonetheless, that she had not shown changed circumstances. First, the evidence regarding her recovery from drug and alcohol addiction was equivocal at best. She completed a six-month outpatient drug treatment program in 10 months, but relapsed during that period, missed or refused numerous drug tests, and falsified others. She tested positive for drugs as late as January 2009. The last drug test in evidence was done on March 17, 2009, two and one-half months before the hearing. The NA sign-in sheets confirmed her attendance for less than two months, from February 28, 2009, through April 22, 2009, around the time she completed her drug treatment program.⁶ Given her past dishonesty regarding her drug use, the court reasonably could have disbelieved that she had been clean since her last drug test and participating in NA meetings on dates not confirmed by a sign-in sheet.

Second, even if the evidence established that Mother was drug-free, she had been clean less than five months, at most. The social worker expressed concern that she had

⁶ Mother’s drug counselor testified that she was required to attend AA meetings at least three times a week to complete the drug treatment program.

not been clean for a significant length of time and would not be able to maintain her sobriety. In light of this evidence and her failure to stay clean after her children were removed, it is not unreasonable to conclude that such a brief period of recovery does not demonstrate a lasting change. Indeed, in *Kimberly F.*, the court recognized that, in these circumstances, it is virtually impossible to demonstrate a sufficient change: “[W]e doubt that . . . the parent who loses custody of a child because of the consumption of illegal drugs and whose compliance with a reunification plan is incomplete during the reunification period [could ever show a sufficient change of circumstances to warrant granting a section 388 motion]. It is the nature of addiction that one must be ‘clean’ for a much longer period than 120 days to show real reform.” (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531, fn. 9.)⁷

Third, although Mother was participating in services, she did not show that her participation had any impact on the problems that led to the dependency of the children. She was seeing a therapist monthly, but could not explain how her therapy had helped her. Her therapist was not able to state that she was ready to have the children back. Mother had completed a parenting course and was attending another, but stated she had not practiced these techniques during visits because she only had an hour with the children and did not want to discipline them. Her visits were still supervised because she was not ready for unsupervised visits. The social worker remained concerned about her parenting skills, including her ability to set limits and assert a strong parental role.

Finally, although Mother’s continuing relationship with Father was a significant problem that led to the dependency and the termination of services, the status of this relationship is conspicuously absent from her discussion in her briefing to us of her “significant change.” The juvenile court found, “In the face of detention and all other issues that the department brought to her attention, still the relationship persisted and [Father] as he states, loves her and he will resort back to her and she to him. There is no

⁷ We are not persuaded by Mother’s overly technical distinction in contending “[t]here was no evidence [she] was using drugs between January and June, which is a period exceeding 120 days.”

reason to think otherwise, given the history of [this] family.”⁸ The evidence reasonably supports this finding. The social worker expressed concern that Mother would not be able to maintain safe boundaries with Father. Mother testified at the hearing that the domestic violence group she attended twice a month “helps me a lot,” but said she “[hadn’t] done really anything right now [to address her relationship with Father].” Significantly, although she acknowledged that she and Father had “argued a lot” with “[a] lot of yelling [and] swearing,” she maintained that he had never been physically violent with her. When asked about her plan regarding her involvement with him, she responded, “It depends on what is going to happen. What is going to happen today” Vague intentions and a few domestic violence sessions do not overcome her established history of returning to this relationship again and again. Indeed, the impending birth of her child ensured that she would maintain some level of involvement with Father.⁹

At best, Mother showed that the circumstances leading to the dependency were changing and that she might someday be able to provide a stable home for the children. The social worker did not believe, however, that she would be ready in another six months to have the children returned. In these circumstances, further reunification services were not in the children’s best interests. “A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child’s best interests. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*))

⁸ Father, who was incarcerated at the time of the hearing, testified that he did not plan to continue his relationship with Mother when he was released. He said he loved her, but was willing to stay away from her to get the children back. The court reasonably rejected this testimony.

⁹ Mother said she was looking into setting up visitation between Father and the child through COPE, a community-based visitation and exchange program for families with a history of domestic violence. Nonetheless, when asked what she would do if he wanted to be part of the child’s life, she said: “I want to start off slowly, since he is the father.”

Mother seeks to distinguish *Casey D.* because the mother in that case had not completed important steps in her drug treatment and had a history of repeated relapses over many years, as well as “a repeated cycle of Departmental intervention in her life.” These distinctions are not significant. To the extent they bear on the existence of a true change in circumstances, we have concluded that Mother did not demonstrate such a change. Moreover, the children in this case, like those in *Casey D.*, had an immediate need for a permanent, stable home. (See *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 49.) It was not in their best interests to prolong reunification efforts indefinitely based on a possibility that Mother might be able to parent them someday.

Mother relies on *In re Kimberly F.*, *supra*, 56 Cal.App.4th at pages 530-532, in contending that additional reunification services were in her children’s best interests. In that case, the children were removed due to the unsanitary condition of the home, the mother later filed a section 388 petition seeking their return, and the juvenile court denied the petition. (See *In re Kimberly F.*, *supra*, at pp. 521-522.) The appellate court reversed, holding that the best interest determination turns on several factors, including: (1) the seriousness of the reason for the dependency and why it was not overcome by the final review, (2) the relative strength of the child’s bonds with the parent and with the present caretaker, including the length of time she has been in the dependency system in relationship to the parental bond, and (3) the alleged change in circumstance, including the degree to which the problem may be easily remedied, the degree to which it actually has been removed, and the reason the change was not made earlier. (See *id.* at pp. 530-532.) The court found it an abuse of discretion to deny the petition since the unsanitary condition had been eliminated, the problem arose while the mother was caring for her teenage son, who had AIDS, and the mother and children had a strong bond. (See *id.* at pp. 532, 534.)

We note a number of important distinctions between this case and *Kimberly F.* Significantly, the mother in that case demonstrated that the circumstances leading to the dependency had changed and sought the return of her children. (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 525, 532-533.) Mother did not make this showing and

petitioned for additional reunification services, not immediate return of her children. The social worker testified that ordering further reunification services would be detrimental to the children, who needed stability, consistency, and permanency. Additionally, the grounds for the dependency here—drug use, extreme neglect, and domestic violence—posed a much greater long-term threat to the children than “poor housekeeping” and were less easily remedied. (See *id.*, at p. 532.) Indeed, Mother’s failure to timely remedy these problems speaks to the strength of her addiction, the depth of her involvement with Father, and her inability to provide consistency and stability to the children. Although Carla had a bond with Mother, the juvenile court found that this bond was not beneficial, and neither of the younger children had an attachment to Mother.¹⁰

We sympathize with Mother’s desire to reunify with her children, and we recognize that she was taking positive steps in that direction. It was not in her children’s best interests, however, to remain in limbo indefinitely on the chance that she might be capable someday of providing them a safe, stable home. Once reunification services are terminated, “ ‘the focus shifts from the parent’s interest in reunification to the child’s interest in permanency and stability.’ ” (*In re Richard C.*, *supra*, 68 Cal.App.4th at p. 1195, quoting *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1340.) “[C]hildhood does not wait for the parent to become adequate.” (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 310.)

The juvenile court did not abuse its discretion in denying Mother’s petition.

III. The Order Terminating Mother’s Parental Rights

Mother also contends that the juvenile court erred in failing to find that the beneficial relationship exception (§ 366.26, subd. (c)(1)(B)(i)) precluded termination of

¹⁰ Mother asks us to weigh her bond with Carla against the three-month period the children had been in foster care in accordance with the second *Kimberly F.* factor. We decline to do so, as we find this comparison irrelevant here. Mother did not seek to have the children taken from their foster parents and returned to her.

her parental rights as to Carla. We review the court’s decision for an abuse of discretion. (See *In re Jasmine D.*, (2000) 78 Cal.App.4th 1339, 1351-1352.)¹¹

At a section 366.26 hearing, the court must determine a permanent plan of care for the child. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 50.) The statute provides three alternatives for permanent placement: adoption, guardianship, and long-term foster care. (§ 366.26, subd. (b); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) Adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.*, *supra*, at p. 573.) Accordingly, if the court finds that the child is likely to be adopted, it must terminate parental rights and order the child placed for adoption unless it finds, for one of six “compelling reason[s],” that termination of parental rights would be detrimental to the child. (See § 366.26, subd. (c)(1)(B)(i)-(vi).) The burden is on the parent to show that one of these exceptions applies. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.)

The “beneficial relationship” exception applies when termination would be detrimental to the child because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) As the Department conceded below that Mother had maintained regular visitation and contact with Carla, our focus is on the second prong of the exception: whether Carla “would benefit from continuing the relationship.” (See § 366.26, subd. (c)(1)(B)(i).) To establish this, Mother was required to demonstrate that the relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) “[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security

¹¹ Mother asserts that the substantial evidence standard governs our review of the court’s decision. Although appellate courts routinely have reviewed termination orders for substantial evidence, Division Three of this court has ruled the appropriate standard is abuse of discretion. (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351 [whether the exception applies is a “quintessentially discretionary determination”].) We will apply the abuse of discretion standard, recognizing as the court did in *Jasmine D.*, that the practical differences between the two standards are insignificant in this context. (*Ibid.*)

and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.” (*Id.*, at p. 575.) The court makes this determination on a case-by-case basis, considering the child's age and particular needs, the time spent in the parent's custody, and whether the child's interaction with the parent produces a positive or negative effect. (*Id.* at p. 576.) If the court finds the relationship with the parent does not benefit the child significantly enough to outweigh the Legislature's strong preference for adoption, the exception does not apply. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

Applying these principles, we find no abuse of discretion. The evidence shows that the children love Mother, and she loves them. Carla, who was seven years old at the time of the hearing, spent the first six years of her life in Mother's custody and said she and Mother love one another. Carla was excited about visits with Mother and often asked during visits if she could come home. She consistently expressed a desire to live with Mother. The juvenile court found that this evidence demonstrates a bond between Carla and Mother. The exception requires more, however, than a showing that visits between the parent and child are pleasant, that the parent has maintained frequent and loving contact with the child, or that the two share an emotional bond. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The exception's applicability turns on the strength and quality of this bond. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A parent cannot “derail an adoption merely by showing the child would derive some benefit from continuing a relationship” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) Indeed, “continued interaction between the biological parent and child will almost always confer some benefit on the child[.]” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Mother was required to show that the relationship “promotes [Carla's] well-being . . . to such a degree as to outweigh the well-being [she] would gain in a permanent home” (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

A court could reasonably find that Carla's relationship with Mother did not satisfy this standard. First, the evidence permits a finding that, on balance, the relationship did not promote Carla's well-being and, for that reason, did not constitute a substantial positive attachment. Carla grew up in a "chronically chaotic" and "unstable" home, where she experienced extreme neglect due to her parents' severe drug addictions and was exposed to domestic violence and possible sexual abuse. She sustained significant psychological harm in this environment that resulted in chronic PTSD and an adjustment disorder, evidenced by anxiety and depression, irritability and hypervigilance, low self-esteem, and episodes of acting out. There was evidence she looked to her foster parents, not Mother, to have her needs met.¹²

Indeed, the evidence showed that Mother was not capable of meeting Carla's needs and would not be able to do so in the near future. The "children [had] substantial needs for stability which [she] [was still] . . . unable to provide." She was in the early stages of her drug recovery and did not show she had made a definitive break with Father, who encouraged her drug use, presented a danger to her and the children, and was a primary source of instability in the home. Additionally, although a year had passed, she still could not handle the children on her own and had not moved beyond supervised visits. These visits also reflect a broader family dynamic in which Carla's needs were overlooked as Mother struggled to manage the younger children. Reluctant to burden her with additional demands, Carla simply tried to stay out of the way. The imminent birth of another child promised to overwhelm Mother further and leave her even less energy and attention to devote to Carla. Finally, and significantly, Mother appears not to have grasped the magnitude of the problems in the home or to take responsibility for the harm the children suffered. She maintained that Carla's emotional and behavioral problems were caused primarily by the foster care system, not the neglect and chaos that prevailed

¹² The children all had "a positive and trusting relationship with their current foster parents" "[Their] eyes light up and they smile when they are talking about the family." Carla was attached to her foster mother and called her by an affectionate Spanish name meaning "little mama."

in the home. Mother could not see that her own failure to provide a safe home for the children led to their removal and foster placement in the first instance.

Second, the evidence shows that Carla was in desperate need of a permanent home and a consistent, nurturing parent. She had been traumatized by the repeated changes in her foster homes and needed the stability of a permanent placement as soon as possible. Like the younger children, she was “in immediate need of permanency with parents that are capable [of] meeting [her] physical, developmental, emotional and social needs.” Carla needed a parent not only to care for her, but also to take over the parental role she had been forced to fill for the younger children. Angel and Mariah were attached to her and looked to her to meet their needs, not Mother. As a result, Carla had developed a negative attachment to her siblings. She had “her own strong, unmet needs for parenting and resent[ed] and resist[ed] her siblings’ demands on her.” This was particularly evident in the children’s negative behavior after visits with Mother, specifically, the arguments, physical aggression, and bossiness that ensued when Angel became clingy with Carla, and she rebuffed him.

Finally, the social worker testified that the children’s relationship with Mother was not so beneficial that termination of parental rights would be detrimental to them. Indeed, because of the children’s need for immediate permanency, the social worker believed it would be detrimental not to terminate parental rights.

A court considering this evidence could reasonably conclude that the benefits of adoption outweighed any benefit Carla might gain from continuing her relationship with Mother. “ ‘[A] child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent.’ [Citation.]” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent.” (*Ibid.*) “The child has a compelling right ‘to [have] a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’ [Citation.]” (*Id.*, at p.

1348.) Guardianship, the plan Mother advocated below, “ ‘is not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.’

[Citation.]” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

Mother contends the juvenile court erred because the evidence shows that Carla would be greatly harmed by the loss of their relationship. (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Mother points out that Carla “had spent the majority of her life in her mother’s care” and that the two had maintained loving contact since Carla was removed.¹³ Mother notes that Carla was grappling in therapy with the prospect of losing her mother, that there was concern she could be negatively impacted by termination, and that the Department had foreseen a need to take therapeutic precautions in telling her she would be adopted. We reject these contentions. First, the evidence Mother cites relates almost exclusively to the trauma all the children would experience in learning they would not be returning home and the measures they all needed to make the transition. This evidence does not show that Carla would suffer particular harm because of her bond with Mother. Moreover, the loss of a parent is traumatic for any child, regardless of whether the attachment satisfies the beneficial relationship exception. Mother must do more than show that termination would result in some detriment to Carla; she must establish “exceptional circumstances.” (See *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1349; *In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.) She did not do so. In light of her failure in this regard and the social worker’s testimony that the children would adjust to the loss of their mother in time, a court could reasonably find that termination of parental rights would not result in great harm to Carla.

Accordingly, we conclude that the juvenile court did not abuse its discretion in declining to apply the beneficial relationship exception in Carla’s case. As Mother’s sole

¹³ Mother cites social science literature in contending, “the importance of formative years in developing a parent/child bond cannot be overstated. Disruption of a child’s initial attachment may have devastating long-term effects upon the child’s future emotional development.” We do not consider these references, as they are not included in the record and were not before the trial court.

challenge to the orders terminating her parental rights as to Angel and Mariah depends on the applicability of this exception in Carla's case, we affirm these orders as well.

DISPOSITION

The orders denying Mother's section 388 petition for renewed reunification services and terminating her parental rights are affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.